No. 9948

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

FREDERIC A. CLARKE, sometimes known as FREDERICK A. CLARKE,

Appellant,

vs.

FEDERAL TRADE COMMISSION,

Appellee.

APPELLANT'S OPENING BRIEF.

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APPELLANT'S OPENING BRIEF.

Statement of the Pleadings and the Facts.

Appellant appeals from an order which directs his commitment for contempt for his refusal to reveal to the Federal Trade Commission *the proportions* of the several ingredients used in compounding a medicinal product under a secret formula owned by him.

THE PLEADINGS:

The pleadings consist of (1) a complaint filed by the Federal Trade Commissioner against appellant on December 8, 1938, wherein appellant is charged with falsely advertising the therapeutic value of his medicinal product [Tr. pp. 37 to 44 incl.]; (2) appellant's answer wherein he denies said charges and challenges the jurisdiction of the Federal Trade Commission to proceed upon the allega-

tions of its complaint [Tr. pp. 44 to 47 incl.]; (3) application for order requiring the giving of evidence wherein there is shown the filing of said complaint and answer, the holding of a hearing thereon by said Federal Trade Commission, and the refusal of appellant to reveal the proportions of the ingredients as used in his said compound [Tr. pp. 2 to 7 incl.]: (4) order compelling obedience to subpoena wherein appellant was required by the District Court to make said revelation [Tr. pp. 8 to 9 incl.]; (5) affidavit of Merle P. Lyon, of date July 14, 1941, in support of order to appellant to show cause why he should not be required to make said revelation or to stand adjudged in contempt [Tr. pp. 24 to 36 incl.]; (6) affidavit of appellant in *re* contempt, wherein appellant sets forth the proceedings before said Federal Trade Commission and the grounds of appellant's refusal to reveal his said trade secret [Tr. pp. 50 to 81 incl.]; (7) petition for order adjudging appellant in contempt, wherein the continued refusal of appellant to make said revelation is set forth [Tr. pp. 85 to 89 incl.]; (8) affidavit of Merle P. Lyon, of date July 28, 1941, supporting motion to require appellant to show cause why he should not make said revelation or be punished for contempt, and wherein the continuing refusal of appellant to make said revelation is set forth [Tr. pp. 90 to 94 incl.]; (9) order, of date July 28, 1941, directing appellant to show cause why appellant should not make said revelation or be punished for contempt [Tr. pp. 94 to 96 incl.]; (10) appellant's demurrer and motion to strike, addressed to said affidavit [Tr. pp. 96 to 98 incl.]; (11) affidavit of appellant, of date July 30, 1941, in response to said affidavit of said Merle P. Lyon, wherein appellant sets

forth reasons why he refuses to reveal said trade secret [Tr. pp. 99 to 102], and (12) order, of date July 30, 1941, adjudging appellant in contempt of court, and which recites appellant's refusal to make said revelation and adjudges appellant in contempt therefor [Tr. pp. 102 to 105 incl.].

THE FACTS:

Appellant represents that this Honorable Court has jurisdiction of this cause for the reason that appellant's grievance, urged here, is justifiable under the Fourth and Fifth Amendments to the Federal Constitution.

The record shows:

(a) That appellant owns and uses a secret formula for compounding a medicinal product which he markets in interstate trade under the names "Boncquet Tablets", "Boncquet Blood Building Tablets" and "Boncquet Hemo-Tabs". His production and marketing plant is located at Glendale, California [Tr. pp. 37, 57 and 58];

(b) That in marketing this product appellant advertised and claimed that his product possessed therapeutic value as a builder of human blood [Tr. pp. 38 to 43 incl.];

(c) That prior to the filing of the complaint herein referred to, affiant builded, and at the time of the filing of said complaint was conducting, a large, extensive, expanding and profitable business throughout the United States of America, in the manufacture and sale of his said products produced under his said secret formula [Tr. p. 57];

(d) That on December 8, 1938, the Federal Trade Commission instituted proceedings against appellant upon its allegations that appellant's advertising respecting the therapeutic value of his product was false and misleading, and sought to sustain its charges by compelling appellant to reveal his secret formula [Tr. pp. 37 to 44 incl.], and

(e) That appellant thereupon revealed the ingredients of his compound but refused to reveal the proportions of said ingredients as used in his product [Tr. pp. 71 to 76 incl.].

Following his refusal to reveal his secret as to the proportions of said ingredients used in compounding said product, appellant was cited for contempt before the Honorable District Court, and, after hearing, was adjudged guilty and ordered committed to the custody of the Marshal until he should answer the questions which called for the revelation of his trade secret as to the proportions of the several ingredients as used in compounding said products. From that order of commitment this appeal is taken.

There is no evidence in this record which tends to show:

(a) That appellant has at any time made any representation as to the proportions in which the several ingredients are used in compounding his products, or

(b) That any representation by appellant as to the therapeutic value of his product is false, or

(c) That any purchaser or user of his product has asserted that any representation by appellant as to the therapeutic value of his product is false, or

(d) That appellant's product does not possess the therapeutic value ascribed to it by him, or that it, or the ingredients of which it is composed, in any proportions, are or would be injurious in any respect to human health, or

(e) That it is necessary to know the proportions in which said ingredients are used in compounding said products, in order to determine the therapeutic value of said products.

The ultimate fact sought to be established in said proceedings, is *"the therapeutic value"* of appellant's products when used in the manner recommended by appellant's advertisements, by persons in the condition therein described.

The facts as to the proportions in which the several ingredients are used in compounding these products, are not in issue. It is not claimed that appellant ever made any representation as to the proportions in which said ingredients are used. The facts in respect of said proportions are sought to be revealed that they may be used as a basis for the expression of an opinion by a medical expert, as to the therapeutic value of these products. The Commission proposes to use such opinions, if they

may be obtained, as a substitute for actual clinical observations of patients under treatment, in proof of the ultimate fact of the therapeutic value of these products.

This record does not support any conclusion that recourse to such *secondary* opinion evidence is necessary, at the expense of appellant's secrets and business, to ascertain the truth as to the therapeutic value of these products. The record confirms the conclusion that the *primary* evidences of clinical observations of the results of the use of these products, may be obtained reasonably. Clearly the observed evidences of the actual results of use, are higher and more satisfactory evidences of the therapeutic value of these products, than would be the opinions of medical experts based upon knowledge of the proportions in which these ingredients are used. It is universally accepted that "*Experience is of all teachers the most dependable.*" (*Funk v. U. S.*, 290 U. S. 371, 381.) . Within this concept that which one *experiences* from the actual use of appellant's products in the circumstances advertised is more dependable as evidence of therapeutic value than is any opinion of a medical expert.

Concise Statement of the Case.

The facts here are simple and not in dispute. Appellant is the owner of a secret formula for compounding a medicinal product for which he claims therapeutic value for building human blood. He has founded a substantial, expanding and profitable interstate business in the manufacture and sale of this product. He has revealed the ingredients which enter into its composition. He refuses to reveal the proportions of those ingredients as contained in his said products. He believes that a revelation of the proportions of his ingredients used in compounding his products would destroy the value of his secret formula and would ruin his business.

The Federal Trade Commission, upon a complaint which charges that appellant falsely advertises *the therapeutic value* of his products, seeks to compel appellant to reveal *the proportions* of the ingredients used in his compound, and urges that unless such revelation is made it will be unable to ascertain the truth or falsity of appellant's said advertisements. The complaint does not charge that appellant falsely advertised, or advertised at all, in respect of the proportions in which he used the ingredients of which his products are composed.

Appellant urges that the revelation desired is not required to establish the truth or falsity of appellant's advertisements for the reasons that the best and highest evidences of the therapeutic value of appellant's products may be obtained by clinical observations of the results obtained by the use of appellant's products, as advertised, in circumstances wherein appellant claims that said products have therapeutic value, and that all other evidences are inconclusive and of secondary importance.

The Federal Trade Commission asserts that its power to compel said revelation is within the breadth of its jurisdiction as conferred upon it by an act of Congress, commonly referred to as the Federal Trade Commission Act (38 Stat. 722; 15 U. S. C. A. Sec. 49).

Appellant contends that said act of Congress does not, in terms, purport to grant such sweeping authority, and that if it did, such grant would be void as in derogation of the rights, immunities and privileges of appellant as guaranteed to him under the Federal Constitution, and particularly under the Fourth and Fifth Amendments thereto.

The Questions Involved.

I.

May the Federal Trade Commission, in a proceeding prosecuted by it against the owner of a secret formula for a medicinal compound, upon an allegation that the owner's advertisement of the therapeutic value of his compound is false and misleading, compel the owner to reveal the proportions of the ingredients used in his compound, when such therapeutic value may be determined by other and better evidences reasonably obtainable, and the revelation would destroy the value, to him, of his formula and his business builded thereon?

II.

May the Federal Trade Commission compel an owner of a secret formula for a medicinal compound, to reveal the proportions of the ingredients used in his compound, which evidence might be used against him in a criminal prosecution under the penal clauses of the Federal Statutes?

ARGUMENT.

This appeal presents, as of first impression under the Federal Trade Commission Act, two fundamentally important constitutional questions. Their proper answer is of great and far-reaching importance, both to the public acting through its constituted agencies, and to the individual members of society whose property and personal security, as guaranteed by the constitution, are at stake.

Concededly, public inquiry into the individual's conduct in respect of his person and property is an indispensable function of sovereignty, to the extent reasonably required to promote the public health, safety and morals. But it is of equal importance that the visitations of the sovereign be restrained within proper limits in order that the constitutional securities of the individual in his property and person shall not be unnecessarily infringed upon.

In its final analysis, the determination of the scope of legitimate inquiry and the restraint necessary to prevent an abuse of sovereign authority, present judicial and not legislative questions. Always, when the individual is required to perform for the public good, the courts have jealously guarded his constitutional immunities against unnecessary exactions. It has been said that: "It never was intended that the extent of a free man's duty to perform should be determined by those who demand performance." (*U. S. v. Basic Products Inc.*, 260 Fed. 472, 482.)

Appellant believes and urges that the demands made upon him by the Federal Trade Commission are unnecessary for the preservation of any public interest, and that the ruinous consequences of his compliance fully justify his refusal, and that the order appealed from is therefrom void as a denial to him of his constitutional immunities under the Fourth and Fifth Amendments to the Federal Constitution.

That the revelation of appellant's trade secret is not necessary to the ends of justice clearly appears from the fact that such revelation is neither the only means, nor the best means, by which the truth or falsity of appellant's advertising respecting the therapeutic value of his product may be determined. Clearly, knowledge of the proportions of the ingredients used by appellant would serve only as a basis for *an expert opinion* as to the therapeutic value of a product so compounded. Opinion evidence is never the equal of a demonstration. The best and higher evidence of the truth or falsity of appellant's representations of therapeutic value is *an actual demonstration* under proper clinical observation of the results obtained from the use of appellant's product in the circumstances related in the advertising. Such a demonstration of therapeutic value by the use of appellant's product in the circumstances related in his advertisements may be expeditiously and easily made. Therefore, there is no need for the revelation, and no justification for making public the secret formula which is the basis of appellant's business. These perfectly obvious facts bring this case squarely within the rule of protection.

I.

May the Federal Trade Commission, in a Proceeding Prosecuted by It Against the Owner of a Secret Formula for a Medicinal Compound, Upon an Allegation That the Owner's Advertisement of the Therapeutic Value of His Compound Is False and Misleading, Compel the Owner to Reveal the Proportions of the Ingredients Used in His Compound, When Such Therapeutic Value May Be Determined by Other and Better Evidences Reasonably Obtainable, and the Revelation Would Destroy the Value, to Him, of His Formula and His Business Builded Thereon?

Indisputably it is a far cry between the day of the "gas light" peddler of patent medicine, in splendid isolation, and the modern complex distribution which covers the consumer's field like a mantle. Protective measures adequate to the former are inadequate to the latter. This was recognized by Wigmore in his treatise on Evidence, Third Edition, Volume 8, Section 2212, page 156, wherein the author states:

> "In a day of prolific industrial invention and active economic competition, it may be of extraordinary consequence to the master of an industry that his process be kept unknown from his competitors, and that the duty of a witness be not allowed to become by indirection the means of ruining an honest and profitable enterprise. This risk, and the necessity of guarding against it, may extend not merely to the chemical and physical composition of substances employed, and to the mechanical structure of tools and machines, but also to such other facts of a possibly private nature as the names of customers, the subjects and amounts of expense, and the like.

> "Accordingly, there ought to be and there is, in some degree, a recognition of the privilege not to disclose that class of facts which, for lack of a better term, have come to be known as trade secrets."

An individual's constitutional immunity to any compulsory revelation of the secrets of his trade or person extends, under eminent authority, to the point that disclosure will not be required "except in such cases and to such extent as may appear to be *indispensable* for the ascertainment of truth". (Wigmore on Evidence, 3rd Ed., Vol. 8, Sec. 2212, p. 159.) The following cases state and apply this principle of determination.

In *Willson v. The Superior Court of Los Angeles County*, 66 Cal. App. 275, the court said:

> "The policy of the law is unquestionably that of fostering and protecting trade secrets, as is shown by the laws affecting their registration, and *unless the interests of justice imperatively demand their disclosure*, a disregard of valuable property rights arising from enforced disclosure, whether by means of contempt proceedings or otherwise, approaches at least the confiscation of private property."

In *Star Kidney Pad Company, et al. v. Greenwood*, 3 Ontario Reports page 280, the court, speaking at page 281, said:

> "I think that the plaintiff's contention is right, and the defendant has no right to the discovery sought. It could scarcely serve any beneficial purpose for him to have a knowledge of the composition in making out a defense, for it seems to me it would be impossible for anyone with certainty to say, should the ingredients prove of the simplest character, cre-

ating no new substance in combination, that they might not be beneficial when applied to the human body in effecting relief from pain, or in promoting some chemical action in the system beneficial in some ailments. That question would have to be solved by the experience of the sufferer rather than the skill of an expert, and the composition of the pads having formed no part of the inducement of the defendant to buy them, I have not been able to see how the ends of justice can be served by compelling the plaintiffs to make disclosures that may destroy their business by enabling anyone without their assistance to make the pad, be it never so useful in the cure of disease, and this would, in that event, work manifest injustice."

United States v. Basic Products Co., 260 Fed. 472, was a proceeding in which the Federal Trade Commission demanded access to the books and papers of a corporation which manufactured a patent article by secret process, for the purpose of obtaining information for the Labor Department as to the cost of manufacture, annual production, capital invested, etc. The defendant refused to reveal his secrets and the court in upholding its contention, speaking at page 482, said:

"An incident of such investigation is the ascertainment of trade secrets. It is plain that the cost of manufacturing a patented product to which the manufacturer has exclusive right may be a trade secret, a species of property of great value. This is also true of refinements of method in producing the same. The act prohibits the disclosure of trade secrets. The assumption that no such disclosure will be made disappears before the expressed intention to give the information to the Navy Department. We have, then,

a contemplated search and seizure, and a contemplated taking of private property for public use, without due process of law, which are violative of the Fourth and Fifth Amendments of the Constitution."

In the case last cited the court pointed out (at page 475) that there was no complaint pending against the defendant in respect of the particular matter as to which the revelation was required. Similarly, we point out, that there is no complaint of the defendant here of any misrepresentation or of any representation at all as to the proportions in which he uses in his products the ingredients of which they are composed.

In *Federal Trade Commission v. American Tobacco Co.,* 68 Law. Ed. 696, the Supreme Court reviewed the attempt of the Federal Trade Commission to compel the production of all of the records of the defendant upon the ground that an examination thereof might disclose some evidence which would assist the Commission in the accomplishment of its purpose. The power which the Commission sought to exercise there was denied in an opinion which clearly reveals the intention of the courts to protect an individual from unreasonable search, seizure and disclosure. It is clearly laid down as a fundamental principle of determination that the power does not exist in the absence of a definite showing that by its exercise revelations would be made of evidences material to an actual as distinguished from a hypothetical issue. The court said, speaking at page 700:

> *"Anyone who respects the spirit as well as the letter of the Fourth Amendment would be loath to believe that Congress intended to authorize one of*

its subordinate agencies to sweep all our traditions into the fire (Inters. Commerce Com. v. Brimson, 154 U. S. 447, 479; 38 L. Ed. 1047, 1058; 4th Inters. Com. Rep. 545; 14 Sup. Ct. Rep. 1125), *and to direct fishing expeditions into private papers on the possibility that they may disclose evidence of crime. We do not discuss the question whether it could do so if it tried, as nothing short of the most explicit language would induce us to attribute to Congress that intent. The interruption of business, the possible revelation of trade secrets, and the expense that compliance with the Commission's wholesale demand would cause, are the least considerations. It is contrary to the first principles of justice to allow a search through all the respondent's records, relevant or irrelevant, in the hope that something will turn up."*

In *Federal Trade Commission v. P. Lorillard Co.*, 283 Fed. 999, the court, in respect of the powers of the Federal Trade Commission to compel disclosures, stated the rule of protection as follows:

"The act makes plain the duty of the Commission to gather, compile, and publish for use in its proceedings what may be voluntarily offered or submitted in response to request or demand. It may also make investigation independently, but *the exercise of visitorial power over private corporations must keep within restrictions of the Fourth Amendment.* 'Neither branch of the legislative department, still less any merely administrative body, established by the Congress, possesses, or can be invested with, a general power of making inquiry into the private affairs of the citizen'.

"Section 6 (b) grants to the Commission the right to require corporations coming within its jurisdiction to make reports concerning their affairs and thus to

furnish to the Commission such information as it may require. A subdivision (a) of Section 6 calls upon the corporations in question to report upon specific matters as provided in subdivision (b). If the corporations fail in reporting or the reports are false, the Commission is entitled, *upon properly showing the probable cause*, to demand due disclosures and access to the inspection of any specific, *necessary*, and relevant papers, excluding such papers as may be privileged. In other words, *there must appear to be some reasonable cause for a search such as a definite complaint charging a specific wrong and thus presenting an inquiry which would have reasonable and readily ascertainable limits.* Such a construction of subdivisions (a) and (b) of Section 6 would effectuate the intent of Congress and the procedure can be kept within constitutional limits. * * * *It was not intended to grant an unlimited power of inquisition* or unlimited right of access to books and papers of private parties not engaged in any public service or a search *without basis of some facts tending to establish a charge of wrong doing.*"

It should be remembered that in the case at bar there is no charge that appellant advertised falsely, or at all, in respect of the proportions in which the ingredients of his products were used.

An interesting application of the rule is found in *Moxie Nerve-Food Co. v. Beach,* 35 Fed. Rep. 465. The factual situation and the holding of the court appear from the following quotation from that case. The court, speaking at page 466, said:

"The witness was asked in his direct examination as to the uses and effects of Moxie, or Moxie Nerve-

> Food, for the terms are used interchangeably, but he was not asked as to the particular ingredient of Moxie, what it was, or the place or source from which it came. In spite of the contention of defendant's counsel to the contrary, it seems to me that this may fairly be considered the limit of the inquiry by the counsel for complainant. But aside from this, I have grave doubt whether the witness can be obliged, under the circumstances existing in this case, to disclose what is evidently a trade secret, the result of which might be to ruin his business"

In *DuBois v. Thomas*, 122 Southern 495, the Supreme Court of Mississippi states the circumstances in which disclosure will be required or denied and emphasizes the necessity, as a prerequisite to disclosure of trade secrets, of a definite issue, and showing that the evidence sought is material to that issue, and a necessity for disclosure in order that the issue may be determined. The court said, at page 495:

> "A witness has a qualified, but not an absolute, privilege of refusing to disclose trade secrets when the disclosure thereof would depreciate their value. *He should not be compelled to disclose such secrets where so to do is not essential to the ends of justice; but where a trade secret is relative to an issue being tried and its disclosure is essential in order that the issue may be correctly determined and justice administered accordingly, a witness is not privileged to refuse to disclose it.* To hold otherwise would violate the general principle 'that testimonial duty to the community is paramount to private interest, and that no man is to be denied the enforcement of his rights merely because another possesses the facts without which the right cannot be ascertained and enforced'."

It is settled law that contempt may not be predicated upon one's refusal to answer a question which is not material to the issue. The following cases declare this rule: *Levy v. Superior Court*, 74 Cal. App. 171; *In re Moore*, 93 Cal. App. 488; *Ex parte F. J. Zeehandelaar*, 71 Cal. 238.

The case at bar must not be confused with cases which have required a revelation of the ingredients used and of the proportions of their use wherein these matters are directly in issue. We remind the court that in the case at bar the appellant has revealed his ingredients. He has refused only to reveal the proportions in which those ingredients are used. There is no charge in the complaint that he has ever advertised falsely, or at all, as to the proportions in which he uses these ingredients. or that the therapeutic value of his products cannot be determined excepting by a disclosure of the proportions of those ingredients. Cases in which disclosures have been held and wherein the factual distinctions from the case at bar are clearly shown, include *California Fig Syrup Co. v. Frederick Stearns & Co.*, 73 Fed. Rep. 812; *Moxie Nerve-Food Co. v. Modox Co.*, 152 Fed. 493; *Worden v. California Fig Syrup Co.*, 187 U. S. 516; *Memphis Keeley Institute v. Leslie E. Keeley Co.*, 155 Fed. 964, and *Coca-Cola Co. v. Joseph C. Wirthman Drug Co.*, 48 Fed. (2d) 743.

The good faith of this appellant is shown by his offer to bear the expense of "any tests which are necessary or advisable to determine the efficiency of this product in the matter now pending before the Federal Trade Commission. I make that stipulation in open court and for all purposes in this proceeding." [Tr. of Rec. p. 115.]

Clearly, these evidences, for the ascertainment and production of which appellant offered to pay, are the best evidences of the truth or falsity of appellant's advertisements respecting the therapeutic value of his products. no reason is shown why the Commission is unwilling to avail itself of these primary evidences but insists upon an unnecessary and ruinous disclosure of trade secrets which concern only matters not in issue under the Commission's complaint against this appellant.

In conclusion upon this subject we respectfully submit that in the absence, as here, of a charge that appellant advertised the proportions in which he used the ingredients of which his products are composed, and that such advertisements were false, there is no issue to which a disclosure of that trade secret may be directed, or any ground upon which it may be required. Appellant has fairly and fully revealed to the Commission everything necessary to a determination upon primary evidences of the therapeutic value of his products. The therapeutic value of his products and his advertising in relation thereto are the only subjects in issue here. Excursions desired by the Commission into further trade secrets of appellant are simply fishing expeditions sought to be conducted in the hope that thereby there may be revealed some evidence of wrong-doing on the part of this appellant not charged in the complaint and as to which the Commission professes its ignorance and its inability to be informed excepting upon such a disclosure. We respectfully submit that however laudable the Commission's desire, in its own estimation, to permit its fruition would be clearly violative of the immunities of this appellant in the enjoyment of his property under the Fourth and Fifth Amendments to the Federal Constitution.

II.

May the Federal Trade Commission Compel an Owner of a Secret Formula for a Medicinal Compound, to Reveal the Proportions of the Ingredients Used in His Compound, Which Evidence Might Be Used Against Him in a Criminal Prosecution Under the Penal Clauses of the Federal Statutes?

It is a fair import upon this record that the Commission desires this disclosure to procure evidences from this appellant which the Commission suspicions may be useful in a prosecution of this appellant under the criminal provisions of the Federal Statutes. That suspicion motivates the Commission's inquiry, clearly appears from the unsubstantial grounds upon which the Trial Examiner predicated his direction to appellant to make the disclosure. At page 66 of the Transcript of Record in this case the following statement of the Trial Examiner appears:

"By Mr. Lyon:

Q. Yes, what are the proportions of those different ingredients? A. Of course, that is my trade secret.

Trial Examiner Reardon: Do you object?

Mr. Soper: Yes, I do.

Trial Examiner Reardon: I will have to overrule the objection and direct the witness to answer.

The Witness: Well, I would be divulging all my trade secrets.

Trial Examiner Reardon: I know that, but I can't help that. I have to direct you to answer. You are selling the product, and we are entitled to know.

The Witness: Well, I decline to answer, to divulge this trade secret.

Mr. Soper: As I understand it, Mr. Clarke, you art not unwilling to let the Commission know that you actually use liver?

The Witness: Oh, no. No, I can show you bills for thousands of dollars from the Swift Company, showing that I used liver, and I am not buying liver just to go out and throw it away and just to tell the Federal Trade Commission."

It is settled law that one may not be compelled to furnish evidence, in such circumstances, which may be used as the basis of a criminal prosecution against him.

In *Federal Trade Commission v. Smith,* 34 Fed. Rep., Second Series, 323, the court, speaking at page 324, said:

"And even as to interstate business, petitioner, *in the absence of a well founded basis,* cannot say to a suspected corporation *'Stand and deliver the possible evidences of the crime of which you are suspected'*. Federal Trade Commission v. American Tobacco Co., *supra;* Federal Trade Commission v. Baltimore Grain Co. (D. C.), 284 F. 886, affirmed 267 U. S. 586, 45 S. Ct. 461, 69 L. Ed. 800. A time may come when petitioner will have established the reasonableness of a demand for particular papers or books from Electric Bond and Share Co. but it does not appear to have arrived. So far, *the suggestion that the corporation may, perhaps, have violated the anti-trust laws, rests only on hearsay or suspicion."*

In *Counselman v. Hitchcock,* 142 U. S. 547; 12 Supreme Court 195, 35 Law. Ed. 1110, the Supreme Court substantially stated that this rule of personal guarantee and protection was not limited to a criminal prosecution but that it applied to a witness in an investigation.

In conclusion we respectfully submit that for the reasons herein stated, and upon the authorities herein referred to, the order appealed from is void because it denies to this appellant the immunities and protection to his property and his person as guaranteed by the Fourth and Fifth Amendments to the Federal Constitution.

We respectfully submit that the order appealed from should be reversed.

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